A.G.S. Graphics, A Division of George Lithographic Co. and Graphic Arts International Union, Local #280, Graphic Arts International Union, AFL-CIO, Petitioner. Case 20-RC-15021

July 20, 1982

## DECISION AND CERTIFICATION OF REPRESENTATIVE

## By Members Fanning, Jenkins, and Zimmerman

Pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted on May 2, 1980, under the direction and supervision of the Regional Director, among the employees in the unit as agreed on by the parties. The tally of ballots furnished the parties at the conclusion of the election showed that, of approximately 68 eligible voters, 31 cast ballots for and 25 cast ballots against the Petitioner; there were 3 challenged ballots, which were not sufficient in number to affect the results of the election. Thereafter, the Employer filed timely objections to conduct affecting the results of the election.

Pursuant to the Board's Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation, and on June 19, 1980, issued her Report on Objections in which she recommended that Employer's Objections 1 through 16 and 19 through 37 be overruled. She found, however, that Objections 17 and 18 raised substantial and material issues of fact which could best be resolved by a hearing. On August 27, 1980, the Board issued its Decision and Order Directing Hearing in which the Board adopted the Regional Director's recommendation that a hearing be conducted on the issues raised by Objections 17 and 18.2

Thereafter, pursuant to the Regional Director's order, a hearing was held before Hearing Officer Walter L. Kintz. On December 12, 1980, the Hearing Officer issued his report in which he concluded that while "the Union may have made impermissably [sic] ambiguous offers to waive initiation fees during 'an organizing drive' that ambiguity was cured by the Petitioner's written pre-election communication to the employees. . . ." He therefore recommended that these objections be dismissed. In so doing, the Hearing Officer found it unnecessary to make credibility resolutions concerning the testimony of three of the Petitioner's witnesses. Thereafter, the Employer filed timely exceptions to the

Hearing Officer's report and, on July 22, 1981, the Board issued its Order Remanding the Proceeding to resolve these issues of credibility and thereby to determine, "whether at the Union's organizing meetings before the election Union representatives stated that the waiver of initiation fees would extend beyond the election to an initial contract." On August 19, 1981, the Hearing Officer issued his Supplemental Report on Objections in which he found that the testimony of witnesses Hammann, Peterson, and Pappert did not support the finding that union representatives stated that the waiver of initiation fees extended to the time when an initial contract was signed. Nevertheless, the Hearing Officer concluded that the analysis in his previous report remained valid and reaffirmed his recommendation that Objections 17 and 18 be "dismissed." The Employer filed exceptions to the Hearing Officer's Supplemental Report on Objections and a supporting brief, and the Petitioner filed limited exceptions to the supplemental report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

We have considered the Hearing Officer's reports, the exceptions and briefs, and the entire record in this case, and hereby adopt the Hearing Officer's findings<sup>3</sup> and recommendations. Accordingly, we shall issue a Certification of Representative.

The essential facts are as follows. At the union meetings held in mid-February and on February 23, 1980,<sup>4</sup> various union officials told the employees that the initiation fees would be waived for employees who signed cards or joined the Union during the "organizing drive." Thereafter, on March 21 and April 3, after most of the unit employees had signed authorization cards or union membership applications, the Union distributed letters to the unit employees which stated the following:<sup>8</sup>

Anyone who is as yet not a member and has not gotten their membership card is invited to

<sup>&</sup>lt;sup>1</sup> The unit is: All production and maintenance employees employed by the Employer at its 217 Second Street, San Francisco, California, facility; excluding all office employees, all office clerical employees, guards and supervisors as defined in the Act.

supervisors as defined in the Act.

2 That decision was not reported in the bound volumes.

<sup>&</sup>lt;sup>3</sup> The Petitioner and Employer except to various findings of the Hearing Officer on the ground that he erred in discrediting certain testimony. It is the established policy of the Board not to overrule a hearing officer's credibility resolutions, unless the clear preponderance of all the relevant evidence convinces us that the resolutions are incorrect. The Coca-Cola Bottling Company of Memphis, 132 NLRB 481, 438 (1961); Stretch-Tex Co., 118 NLRB 1359, 1361 (1957). We find insufficient basis for disturbing the credibility resolutions in this case.

<sup>4</sup> All dates herein refer to 1980 unless otherwise specified.

<sup>5</sup> The Hearing Officer found inconclusive the evidence introduced with respect to the union meetings which took place on March 23 and shortly before the election.

<sup>6</sup> Except for a different meeting date, the letters distributed on March 21 and April 3 are identical.

attend a meeting on [respective day, time and place]. The purpose of the meeting is to get you your membership cards and to take the oath. Many of you already are sworn in but others did not have the opportunity to do so as yet.

There are no fees and nothing to pay until we have a contract after the election is won.

The Employer contends that the offer made by the Petitioner at the February union meetings to waive initiation fees for unit employees who signed authorization cards or joined the Union during "the organizing drive" is impermissible under the Supreme Court's decision in N.L.R.B. v. Savair Manufacturing Company, 414 U.S. 270 (1973), and that it was not cured by the letters distributed to the unit employees by the Union on March 21 and April 3.

The Hearing Officer found, and we agree, that the offer to waive initiation fees during an "organizing drive" is ambiguous with respect to the principles established in Savair. However, he further found, and we agree, that Board cases interpreting and applying the Savair decision permit clarification and repudiation of impermissible waivers of initiation fees, and that the letters distributed to the unit employees by the Union on March 21 and April 3 clarified the Union's ambiguous offer to waive such fees.

Our dissenting colleague has placed great emphasis on the wording of the first paragraph of the letters which appears to direct the letters to those who had already joined the Union. However, this conclusion ignores that the letters were sent to all the unit employees, and that any doubts or ambiguities raised by the first paragraph of the letter were effectively clarified and raised by the letter's last paragraph which clearly states, "There are no fees and nothing to pay until we have a contract after the election is won." (Emphasis supplied.) The balance of the letter was simply a reference to a union rally meeting where administrative details would be addressed and additional memberships would be solic-

ited, and was not the fatal "ambiguity" on which the dissent places so much stress.

Accordingly, the Employer's Objections 17 and 18 are hereby overruled.

## CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Graphic Arts International Union, Local #280, Graphic Arts International Union, AFL-CIO, and that pursuant to Section 9(a) of the Act the foregoing labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All production and maintenance employees employed by the Employer at its 217 Second Street, San Francisco, California, facility; excluding all office employees, all office clerical employees, guards and supervisors as defined in the Act.

## MEMBER ZIMMERMAN, dissenting:

I find that the Petitioner's offer to waive initiation fees during the "organizing drive" is impermissible under the Supreme Court's decision in N.L.R.B. v. Savair Manufacturing Company, 414 U.S. 270 (1973), and, contrary to the majority, that the letters distributed to the unit employees by the Union on March 21 and April 3, 1980, did not cure the deficiency.

Both letters sent by the Union began with an invitation to employees who had not received membership cards to attend a meeting where they would receive the cards and take the oath of membership. Thus, the letters were not directed to all employees. They were not addressed to those employees who became union members in response to the previous objectionable offers of waiver. 10 This fatally impairs the effectiveness of the letters as a clarification of the ambiguity. In those cases relied on by the majority, the unions' clarifying statements were directed to all unit employees and no distinctions were made between employees who had become members and those who had not. Since the letters were addressing only those who had not yet become members, the statements that there would be "no fees and nothing to pay" should be construed as nothing more than an offer limited to those employees. The failure to direct

<sup>&</sup>lt;sup>7</sup> Western Refrigerator Co., Subsidiary of the Hobart Manufacturing Co., 213 NLRB 227 (1974).

<sup>&</sup>lt;sup>8</sup> See, e.g., Polyflex M Company, 260 NLRB 1146 (1982), and 258 NLRB 806 (1981); Firestone Steel Products Company, a Division of Firestone Tire and Rubber Company, 235 NLRB 548 (1978); Rounsaville of Tampa, Inc., 227 NLRB 1079 (1977); Peabody Solid Waste Management DeWald, 214 NLRB 817 (1974). Western Refrigerator Co., supra; see also Smith Company of California, Inc., 215 NLRB 530 (1974).

<sup>&</sup>lt;sup>9</sup> Unlike our dissenting colleague, we would put no onus on the Union to also show that the employees who had earlier signed cards had reaffirmed these actions after this clarification. See, e.g., Polyflex M. supra, in which our dissenting colleague joined us in finding a sufficient clarification without recourse to this consideration on which he now places reliance.

<sup>&</sup>lt;sup>10</sup> Such ambiguous offers are to be construed against the Union so as to require that the election be set aside. Western Refrigerator Co., Subsidiary of the Hobart Manufacturing Co., 213 NLRB 227 (1974).

the letters to all unit employees warrants the finding that they do not sufficiently clarify the previous ambiguous statements made by union representatives concerning the waiver of initiation fees.

Moreover, the Hearing Officer found that most of the unit employees had either signed authorization cards or joined the Union prior to the distribution by the Union of the March 21 and April 3 letters. There is no indication that these employees were afforded an opportunity to reaffirm their initial action after the Union's allegedly clarifying let-

ters were distributed.<sup>11</sup> It therefore appears that, even assuming the Union's letters clarified the previous ambiguous statements, they came too late to effect a cure as to those who had already joined the Union before March 21.

Accordingly, I would sustain the Employer's Objections 17 and 18, set aside the May 2 election, and direct a second election.

<sup>&</sup>lt;sup>11</sup> Polyflex M Company, 260 NLRB 1146 (1982), cited by my colleagues, is distinguishable for there was no evidence in that case that a majority of the unit employees had signed authorization cards prior to the distribution of the union's notice.